

Montana Water Court
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FILED
07/07/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0318-R-2023
Lambert, Kathryn
3.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: John S. Armstrong; Carbella Ditch Co.; Thomas M.
Grinsteiner

CASE 43B-0318-R-2023
43B 195144-00
43B 195145-00
43B 195149-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Each of these claims appeared in the Preliminary Decree with the following remarks:

AN AMENDMENT WAS SUBMITTED ON 03/13/2018 REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE. DITCH NAME

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The Amendment filed in 2018 is a single document for all three claims requesting amendment of the ditch name, not the place of use as stated in the remark. The February 17, 2023 Order Consolidating Case And Setting Filing Deadline states:

The requested amendment is to change the ditch name on all of the points of diversion from BAILEY DITCH to CARBELLA DITCH. The basis for changing the ditch names is not stated. The ditches are each named BAILEY DITCH in the 1951 Park County Water Resources Survey (copy attached). The Point Of Diversion Index for the Preliminary Decree shows all other claims using these same ditches also have BAILEY DITCH as their ditch name (copies attached). It is unclear why the claimants want the ditch name changed.

A March 31, 2023 deadline was set for the claimants to file documentation supporting the requested amendments of the ditch names. Nothing was filed.

The April 10, 2023 Order Extending Filing Deadline states:

As the Court cannot grant the amendments without the needed evidentiary support, it is

ORDERED that the deadline is EXTENDED to **May 11, 2023** for the claimants to file documentation supporting the requested amendments of the ditch names. If nothing is filed by this deadline, the Court will conclude the claimants have decided they no longer want to amend these claims as requested, and will issue a Master's Report recommending denial of the amendments.

Nothing was filed. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDING OF FACT

For each claim, the remarks concerning the 2018 Amendment provide notice that the amendment was filed. The ditch name remark provides notice of this change made prior to issuance of the Preliminary Decree. These remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The claimants did not file the needed evidentiary support for the requested Amendment. The Amendment as filed is not sufficient to contradict and overcome the prima facie claims.

RECOMMENDATIONS

Based upon the above, this Master recommends that the Court deny the Amendment as unsupported and remove the remarks as stated in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

John S. Armstrong
903 N 18th St
Billings, MT 59101

Carbella Ditch Co.
% Mary Hagemeyer
PO Box 93
Emigrant, MT 59027

Thomas M. Grinsteiner
1306 Lewis Ave
Billings, MT 59102

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 195144-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

CARBELLA DITCH CO
% MARY HAGEMEYER
PO BOX 93
EMIGRANT, MT 59027

THOMAS M GRINSTEINER
1306 LEWIS AVE
BILLINGS, MT 59102

JOHN S ARMSTRONG
903 N 18TH ST
BILLINGS, MT 59101

Priority Date: JULY 1, 1896

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.25 CFS

THE MULTIPLE DIVERSION POINTS DO NOT GIVE THE CLAIMANT THE POWER TO USE AT ANY ONE TIME MORE THAN THE FLOW RATE DECREED FOR THAT RIGHT BY THE USE OF THE RIGHT FROM MORE THAN ONE POINT OF DIVERSION. SEE STIPULATION AND MASTER'S REPORT FILED IN TEMPORARY PRELIMINARY DECREE CASE 43B-83.

Volume: 595.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 123.24

Source Name: TOM MINER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	25	7S	6E	PARK

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BAILEY DITCH

2		NWNWSW	30	7S	7E	PARK
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Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BAILEY DITCH

3 NENESE 25 7S 6E PARK

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BAILEY DITCH

Period of Use: MAY 1 TO OCTOBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	44.39		SE	19	7S	7E	PARK
2	78.85		NE	30	7S	7E	PARK
Total:	123.24						

PLACE OF USE IS WITHIN CERTIFICATE OF SURVEY #473, TRACTS 1, 2, 9, 11, 12, 13, 15, 16, 18, 19, 20 AND 26 AND CERTIFICATE OF SURVEY #866, TRACTS 17A AND 24A.

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

195144-00

195145-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 195145-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

CARBELLA DITCH CO
% MARY HAGEMEYER
PO BOX 93
EMIGRANT, MT 59027

THOMAS M GRINSTEINER
1306 LEWIS AVE
BILLINGS, MT 59102

JOHN S ARMSTRONG
903 N 18TH ST
BILLINGS, MT 59101

Priority Date: JULY 1, 1886

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

THESE MULTIPLE POINT OF DIVERSIONS DO NOT GIVE THE CLAIMANT THE POWER TO USE AT ANY ONE TIME MORE THAN THE FLOW RATE DECREED BY THE USE OF THIS RIGHT FROM MORE THAN ONE POINT OF DIVERSION. SEE STIPULATION AND MASTER'S REPORT FILED IN TEMPORARY PRELIMINARY DECREE CASE 43B-175.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 123.24

Source Name: TOM MINER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	25	7S	6E	PARK
Period of Diversion:	MAY 1 TO OCTOBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	BAILEY DITCH					
2		NENESE	25	7S	6E	PARK
Period of Diversion:	MAY 1 TO OCTOBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	BAILEY DITCH					
3		NWNWSW	30	7S	7E	PARK

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BAILEY DITCH

Period of Use: MAY 1 TO OCTOBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	44.39		SE	19	7S	7E	PARK
2	78.85		NE	30	7S	7E	PARK
Total:	123.24						

PLACE OF USE IS WITHIN CERTIFICATE OF SURVEY NO. 473 TRACTS 1, 2, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20, 26 AND CERTIFICATE OF SURVERY NO. 866 TRACTS 17A AND 24A, PARK COUNTY.

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

195144-00

195145-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 195149-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

CARBELLA DITCH CO
% MARY HAGEMEYER
PO BOX 93
EMIGRANT, MT 59027

THOMAS M GRINSTEINER
1306 LEWIS AVE
BILLINGS, MT 59101

JOHN S ARMSTRONG
903 N 18TH ST
BILLINGS, MT 59101

Priority Date: JULY 1, 1879

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 392.70 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 123.24

Source Name: TOM MINER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	25	7S	6E	PARK
Period of Diversion:	MAY 1 TO OCTOBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	BAILEY DITCH					
2		NENESE	25	7S	6E	PARK
Period of Diversion:	MAY 1 TO OCTOBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	BAILEY DITCH					
3		NWNWSW	30	7S	7E	PARK
Period of Diversion:	MAY 1 TO OCTOBER 31					
Diversion Means:	HEADGATE					

Ditch Name: BAILEY DITCH

Period of Use: MAY 1 TO OCTOBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	44.39		SE	19	7S	7E	PARK
2	8.00		SE	30	7S	7E	PARK
3	70.85		NE	30	7S	7E	PARK
Total:	123.24						

THE PLACE OF USE INCLUDES TRACTS 1, 2, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20 AND 26 CERTIFICATE OF SURVEY NO. 473, PARK COUNTY AND TRACTS 17A AND 24A CERTIFICATE OF SURVEY NO. 866, PARK COUNTY.

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

24630-00

25635-00

193797-00

195149-00